IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 7805 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHAH DHVANITKUMAR INDRAVADAN

VERSUS

STATE OF GUJARAT

Appearance:

MR KETAN A DAVE for the Petitioner

MR MUKESH A PATEL for Resondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 09/05/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The petitioner, by this petition under Article 226 of the Constitution is praying for direction to the respondents to fill up the vacancies which have arisen in the degree course of Pharmacy as a result of

reshuffling of admission by further operating merit list in order of preference/choice of students. In the alternate, prayer has been made for direction to the respondents to treat the petitioner as having been admitted in free seat of degree course of B. Pharmacy and to direct the respondents to return the amount of payment charges received from the petitioner along with interest.

3. The petitioner passed his XIIth standard examination in the month of May, 1997. AS per the centralised merit list for admission to various courses including degree in Pharmacy in the State, his merit No. was 2831. AS per the merit number in the centralised merit list, the petitioner was admitted on payment seat in degree of Pharmacy course at K.B. Institute of Pharmaceutical Education and Research, Gandhinagar. It is the case of the petitioner that in October, 1997, Centralised Degree Admission Committee initiated steps for filling up newly created additional seats by operating the merit list. As a result of reshuffling, what the petitioner contends, many seats have become vacant in other courses including the Pharmacy course. The petitioner has given out that, as per his information 12 students of B. Pharm course have opted for other Engineering courses and those seats are required to be fill up by operating the merit list. It is the grievance of the petitioner that the respondents have further operated the merit list for vacancies arisen in other branches i.e. Engineering, Medical etc. but not in the Pharmacy course. In case this merit list would have been operated, it is the say of the petitioner that he would have been admitted in the free seat. In para No.2.5 of the special civil application the petitioner has given out the details of those 12 students of B. Pharm who have secured admission in newly created Engineering seats.

4. On the direction of this court, an affidavit in reply to para 2.5 has been filed by the respondents which is there on the record. In reply, it is stated on oath that the information except the student at merit No.SE 411 is incorrect. It is stated that the students mentioned in para- 4 of L.M. Pharmacy College have vacated the seats of B. Pharm. As against these vacancies, the N.T./D.N.T candidates were adjusted to limit the admission to the approved intake. The details of the initial status of admission of L.M. Pharmacy, if the petitioner wants to get shifted have been given out.

5. The petitioner has not filed any reply to this

affidavit and thereby the averments made therein are to be accepted. So it is clear that whatever is stated by the petitioner in para-2.5 of the special civil application is not correct except the student at merit No.SE 411. As per the merit number of the petitioner, there are about 128 students above him who have been admitted at places other than Ahmedabad. The petitioner had given preference for Ahmedabad and Gandhinagar. I find sufficient merits in the contention of the learned counsel for the respondents that in case the claim of the petitioner is to be entertained then the claim of these 128 students has to be considered first as they are above the petitioner in the merit list. The details of these 128 students who are above the petitioner has been give out in para-8 of the reply to the special civil application and I find that out of 128 students, 15 students have been admitted in Degree of Pharmacy course at K.C.B.P. Gandhinagar against the payment seats.

6. In view of these facts, which are not controverted by the petitioner by filing any rejoinder affidavit, 15 students are above him in the merit list and if reshuffling would have been there then the petitioner would have no chance to get admission against the free seat. The total vacancies available in this degree course due to reshuffling are 7 to 8 whereas 15 students in this course above the petitioner are there in the merit list on the payment seat.

7. Taking into consideration the totality of the facts of this case, I do not find any merits in this special civil application. The claim made by the petitioner in this special civil application is wholly baseless. None of the legal or fundamental right of the petitioner is being infringed which calls for the interference of this court under Article 226 or 227 of the Constitution.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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zgs/-